

1 PARRA VICTOR  
2 CDC NO. P-58682  
3 P.O. Box. 799002  
4 San Diego CA. 92179  
5 In pro se

FILED

2008 AUG -4 PM 2:27

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

MING PRO TUNC

JUL 30 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 VICTOR PARRA, Jr.,

12 Plaintiff

13 v.

14 R. HERNANDEZ, et al.,

15 Defendants

Civil No. 08CV0191 H (CAB)

NOTICE OF MOTION TO ALTER OR AMEND  
A JUDGMENT

Hearing : August 4, 2008

Time : 9:00 am

Court : E

Judge : The Honorable Cathy Ann Bencivengo

17 COMES NOW Plaintiff Victor Parra, In pro se. Please take notice that  
18 On August 4, 2008, Plaintiff will move the court to alter or amend the entry of  
19 judgment on defendants motion to dismiss and Alter or amend the Report and  
20 Recomendations [DOC No. 19-1].

22 Dated July 27, 2008

Respectfully Submitted

Victor Parra

In pro se

28

CR  
25  
26  
27  
28  
1

VERIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08CV0191 H (CAB)

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra  
THAT: I AM THE Plaintiff DECLARE UNDER PENALTY OF PERJURY  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF: July 2008 AT Richard J. Donovan  
Corr. Fac. 480 Alta Road, San Diego CA. 92179

(SIGNATURE) Victor Parra  
(DECLARANTIPRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Correctional Facility County  
San Diego, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~NOT~~  
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27 2008 I SERVED THE FOREGOING: Notice of Motion to  
Alter or Amend a Judgment

## (SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT 480 Alta Road, San Diego CA. 92179-9002

(To the Clerk)  
United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego CA. 92101-8900

Sylvie P. Snyder  
Deputy Attorney General  
110 West A. Street, Suite 1100  
San Diego CA. 92101  
P.O. Box. 85766  
San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 27, 2008

Victor Parra

(DECLARANTIPRISONER)

2

1 PARRA VICTOR  
2 CDC No. P-58682  
3 P.O.Box. 799002  
4 San Diego CA. 92179  
5 In pro se

FILED

2008 AUG -4 PM 2:27

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

NUNC PRO TUNC  
JUL 30 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 VICTOR PARRA, Jr.,

12 Plaintiff

13 v.

14 R. HERNANDEZ, et, al.,

15 Defendants

Civil No. 08CV0191 H (CAB)

MOTION TO ALTER OR AMEND A JUDGMENT  
PURSUANT ON(FED.R.CIV.P) Rule 59(c)

Hearing : August 4, 2008

Time : 9:00 am

Court room : E

Judge : The Honorable  
Cathy Ann Bencivengo

17 On July 22, 2008 This Court filed a "Report and Recommendations" granting  
18 defendants motion to dismiss [DOC No. 19-1]

19 In response to defendants motion to dismiss plaintiff filed an opposition on  
20 July 12, 2008 see Suplemental Lodgement following this motion.

21 The court apparently did not receive the documents plaintiff submitted as an  
22 answer in opposition to defendants motion to dismiss.

23 Plaintiff now respectfully moves the court to review and consider plaintiff's response  
24 to defendants motion to dismiss and incorporate arguments of law and fact in an altered or  
25 Amended Report and Recommendations.

27 Dated : July 27, 2008.

Respectfully Submitted

Victor Parra In Prose

VERIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08CV0191 H (CAB)

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra  
THAT: I AM THE Plaintiff DECLARE UNDER PENALTY OF PERJURY  
IN THE ABOVE ENTITLED ACTION;  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF July 2008 AT Richard J.  
Donovan Correctional Facility 480 Alta Road, San Diego CA 92179-9002

(SIGNATURE) Victor Parra  
(DECLARANTIPRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Correctional Facility San Diego  
County STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM A  
PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27, 2008 I SERVED THE FOREGOING: Motion to Alter or  
Amend a Judgment Pursuant to Fed R. Civ. P. 59(c)

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT 480 Alta Road, San Diego CA 92179-9002

(To the Clerk) --  
United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego CA 92101-8900

Sylvie P. Snyder  
Deputy Attorney General  
110 West A. Street, Suite 1100  
San Diego CA 92101  
P.O. Box 85266  
San Diego CA 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 27, 2008

Victor Parra

(DECLARANTIPRISONER)

1 PARRA VICTOR  
2 CDC No. P-58682  
3 P.O. Box. 799002  
4 San Diego CA 92179  
5 In Pro se

FILED

2008 AUG -4 PM 2:27

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

NUNC PRO TUNC  
JUL 30 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 VICTOR PARRA, Jr.,

12 Plaintiff

13 v.

14 R. HERNANDEZ, et al.,

15 Defendants

16 Civil No. 08CV0191 H (CAB)

17 MEMORANDUM OF POINTS AND AUTHORITIES  
18 IN SUPPORT OF PLAINTIFFS MOTION TO  
ALTER OR AMEND A JUDGMENT Fed.R.Civ.P.59(e)

19 Hearing : August 4, 2008

Time : 9:00 am

Court room : E

Judge : The Honorable  
Cathy Ann Bencivengo

This memorandum of Law is submitted in support of plaintiffs motion  
to alter or amend a Judgment pursuant to Federal Rules of Civil Procedure (Fed.R.Civ.P.)  
Rule 59 subsection (e) which states:

"Any motion to alter or amend a judgement shall be filed  
no latter than 10 days after entry of the judgment." Id

Standard of Review

Rule 59(e) preserves the district courts right to alter or amend a  
judgnient after the judgment is entered. Motions to alter or amend a judgment are  
appropriate where they involve reconsideration of matters properly encompassed in the  
decision on the merits. White V. New Hampshire Dept of Employment Sec., 455 U.S.445,  
451,102 S.Ct. 1162, 1166 (1982).

1       The case law acknowledges four grounds that justify altering or amending a  
 2 judgment: to incorporate an intervening change in the law, to reflect new evidence not  
 3 available at the time of trial, to correct a clear legal error and (to prevent a manifest  
 4 injustice) (*Messina V. Krakower*, 439 F.3d, 758 (D.C. Cir. 2006))

5       These motions are not limited to judgments entered after a trial; they may also be  
 6 used if the Court has entered judgment without trial, for example, by granting a motion to  
 7 dismiss or for summary judgment. see *Emory V. Secretary of Navy*, 819 F.2d 291, 293 (D.C.  
 8 Cir. 1987)

9       A party seeking to alter or amend a judgment must file the motion within 10 days  
 10 after the district court enter its judgment on the docket see *Schudel V. General Elec. Co.*,  
 11 120 F.3d 991 (9th Cir. 1997) (noting that such motions be filed, not served, within 10  
 12 days following entry of judgment). Cert. denied. 523 U.S. 1094, 118 S.Ct. 1560 (1988) Prisoner  
 13 "mail box rule" has been adopted by some courts for Rule 59(e) motions. Consequently,  
 14 a pro se prisoner's papers will be deemed file when deposited with the post office.  
 15 *Morris V. Unum life Ins. Co.*, 430 F.3d 500, 502 (1st Cir. 2005).

16       On March 13, 2008, This Court perform a sua sponte screening of the  
 17 complaint.

18       On May 23, 2008 Defendants file motion to dismiss

19       On July 12, 2008 Plaintiff timely filed an opposition to defendants motion  
 20 to dismiss.

21       On July 22, 2008 This Court filed a Report and Recomendations and  
 22 granted defendants motion to dismiss.

23       Plaintiff a prisoner confined at Unit 8, Administrative Segregation with  
 24 limited access to legal supplies, pencil, paper and copy machine. Submitts a Copy of his  
 25 opposition to dismiss in support of his motion to alter or amend the judgment on  
 26 defendants motion to dismiss ruling.

27       Because plaintiff only has 10 days to file such motion plaintiff submitts  
 28 the motion, followed by a Supplemental Lodgement containing a copy of all documents

1 filed on July 12, 2008.

2 Plaintiff respectfully request the order [DOC No. 19-1] "Report and  
3 Recommendation" be altered or amended to reflect plaintiffs opposition and his legal  
4 arguments considered and incorporated in the courts conclusion of law and fact.  
5

6 Dated: July 27, 2008

Respectfully Submitted  
Victor Parra  
In Prose

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

VERIFICATION

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Case No. 08 CV 0191 H CAB

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, VICTOR PARRA  
THAT: I AM THE Plaintiff DECLARE UNDER PENALTY OF PERJURY  
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS  
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND  
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF JULY 2008 AT Richard J. Donovan  
Correctional Fac. 480 Alta Road, San Diego CA. 92179-9002

(SIGNATURE) Victor Parra  
(DECLARANTIPRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, VICTOR PARRA AM A RESIDENT OF Richard J. Donovan Corr. Fac. San Diego  
County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~A PARTY OF THE ABOVE-ENTITLED ACTION.~~ MY STATE PRISON ADDRESS IS: P.O. BOX

ON JULY 27, 2008 I SERVED THE FOREGOING: Memorandum of Points  
And Authorities in Support of Plaintiff's Motion to Alter or Amend a Judgment Fed.R.Civ.P.  
39(c)

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),  
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED  
AT 480 Alta Road, San Diego CA. 92179-9002

(To the Clerk)  
United States District Court  
Southern District of California  
880 Front Street, Suite 4290  
San Diego CA. 92101-8900

Sylvie P. Snyder  
Deputy Attorney General  
110 West A. Street, Suite 1100  
San Diego CA. 92101  
P.O. Box 85266  
San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS  
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.  
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 27, 2008

Victor Parra

(DECLARANTIPRISONER)

4.